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U.S. Department of Homeland Security

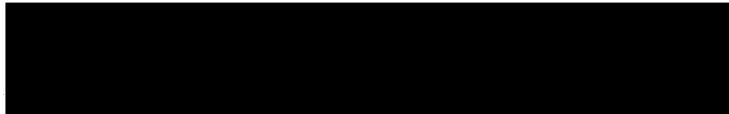
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536



JUL 02 2003

File: WAC 01 217 54789

Office: CALIFORNIA SERVICE CENTER

Date:

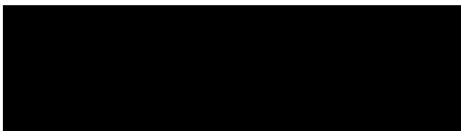
IN RE: Petitioner:

Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a music director.

The acting director denied the petition, finding that the petitioner failed to establish that the position qualifies as that of a religious worker and that it had the ability to pay the beneficiary's wage.

On appeal, counsel for the petitioner submits a brief arguing that case law holds that music directors are religious workers.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a religious organization. The beneficiary is a native and citizen of the Philippines. The

petitioner submitted evidence that it has the appropriate tax-exempt recognition. The petitioner claims that the beneficiary entered the United States in 1990 in an undetermined status.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy several eligibility requirements.

The first issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

In this case, the petitioner asserts that "the ability to lead our music program requires a thorough understanding of the role of religious music, as well as experience in leading musical program" and that the beneficiary "integrates music into our services and other occasions." Counsel for the petitioner asserts that the proffered position is equivalent to that of a cantor, which is specifically listed as a qualifying religious occupation. Counsel's argument is not persuasive. The regulation lists examples of potential religious occupations. Not all cantors will qualify as religious workers. The Bureau must consider each petition on its individual merits.

Counsel for the petitioner also argues that in the *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978) and in the *Full Gospel Portland Church v. Thornburgh*, 730 F. Supp. 441 (D.D.C. 1988), it was held that the position of music director was a religious occupation. It is noted that *Matter of Rhee* does not stand for the proposition that music directors qualify as religious workers. In *Matter of Rhee*, the Board upheld the Bureau's (then the Service) determination that the beneficiary did not qualify as a minister. The decision in *Full Gospel Portland Church* involved an accompanist and choir director seeking a third preference visa. The petitioner has failed to establish that these decisions have any bearing on the case at hand.

After a review of the record, it is concluded that the petitioner has not established that the position of "music director" constitutes a qualifying religious occupation.

First, the petitioner submitted no documentation that the position is a traditional full-time paid occupation in its denomination. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, the petitioner failed to establish that the beneficiary's job duties are integrally related to a traditional religious function.

Finally, in reaching a determination on whether a position constitutes a religious occupation for the purpose of special immigrant classification, the Bureau must distinguish between common participation in the religious life of a denomination and engaging in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. Such voluntary positions filled by members of a congregation are not considered religious occupations. The Bureau interprets its own regulations to hold that religious occupations are full-time paid positions. While participation with youth is a tradition in many denominations, there is no evidence that the instant position is a traditional full-time paid position with the prospective employer or its denomination at large. Therefore, it must be concluded that the petitioner has failed to establish that the proposed position constitutes a qualifying religious occupation.

The second issue to be addressed in this proceeding is whether the petitioner established that it had the ability to pay the proffered wage.

A petitioner also must demonstrate its ability to pay the proffered

wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied the documentary requirement. For this reason as well, the petition may not be approved.

Beyond the decision of the acting director, the petitioner has not established that the beneficiary has the two years experience in the proffered position as required by 8 C.F.R. § 204.5(m)(1). According to the evidence on the record, the beneficiary was employed as a leader of the youth ministry and a singer for the Living Waters Praise Band at the time of filing the instant position, yet the petitioner seeks to employ the beneficiary as a music director. Since the appeal will be dismissed for the reasons stated above, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.